

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOSEPH ANTON *ET AL.*,
Plaintiffs,

vs.

THE GOODYEAR TIRE & RUBBER CO., *ET AL.*,
Defendants.

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CIVIL ACTION H-06-3221

ORDER

This products liability case is before the court on plaintiffs' motion to compel Goodyear to answer document requests (Dkt. 50). Having considered the parties' submissions and the law, the court concludes that plaintiffs' motion should be, for the most part, granted.

Goodyear objects to producing documents to requests 1-4 of plaintiffs' fourth set of requests for production. These requests seek design specifications and all adjustment data and statistical analysis of adjustment data for Goodyear tire models G670 RV and 295/80R22.5 G391. Goodyear objects because the allegedly defective tire at issue in this case was a model 275/70R22.5 G159; because plaintiff has not specifically alleged its defect theory; because plaintiffs have not limited their requests to tires of a specific size; and because plaintiffs have not limited their requests to tires manufactured during a specific time-frame.

Goodyear's objections are based on argument as to why plaintiffs' theories in this case fail on the merits, or why the information sought is of little or no evidentiary value, but they

are not valid objections to discovery. “Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. FED. R. CIV. PRO. 26(b)(1). Whether or not the information sought *is admissible* is not the proper inquiry. Plaintiffs have alleged that the subject tire was defective for at least five reasons: (1) improper bonding during manufacturing; (2) poor and inadequate adhesion between the two major steel belts; (3) failure to incorporate the requisite amount of antidegradant chemicals in the tire’s skim stock; (4) failure to issue warnings; and (5) failure to incorporate a nylon overlay. Items 3 and 5 (and possibly 2) allege design defects.¹ One element of proof necessary in a design defect case is proof that a feasible, safer alternative design exists. TEX. CIV. PRAC. & REM. CODE § 82.005 (Vernon 2007); *Boatland of Houston, Inc. v. Bailey*, 609 S.W. 2d 743, 746 (Tex. 1980).

Plaintiffs seek design information on tires other than the G159 because such information could shed light on safer alternative designs. Texas courts have found information related to similar products relevant in product liability cases. *Cantrell v. Hennessy Indus., Inc.*, 829 S.W.2d 875, 876 (Tex. App. – Tyler 1992, writ denied), *cert. denied*, 508 U.S. 912 (1993); *Jambole v. Touchy*, 673 S.W.2d 569, 573 (Tex. 1984), *overruled in part on other grounds*, *Walker v. Packer*, 827 S.W.2d 833 (Tex. 1992); *In re Merck & Co.*, 150 S.W.3d 747, 749 (Tex. App. – San Antonio 2004, no pet.); *Indep.*

¹ Goodyear apparently believes that plaintiffs should have to pick one defect and stick with it, instead of alleging a “generalized hodgepodge” of theories. Goodyear’s response, at 4. Plaintiffs are entitled to allege more than one theory of recovery.

Insulating Glass/Southwest, Inc. v. Street, 722 S.W.2d 798, 803 (Tex. App. – Fort Worth 1987, no writ).

Plaintiffs request for information related to the G670 and G391 tires does not seek information for tires that are the same size as the 275/70R22.5 G159 tire that failed in this case. Therefore, Goodyear argues, plaintiffs are not seeking information for “substantially similar”² products.

In *Jampole*, the Texas Supreme Court instructed against taking an overly restrictive view of the degree of similarity necessary for information regarding other designs to be relevant. At issue in *Jampole* was the design of the fuel tank on the 1976 Vega hatchback. The court stated:

The automobiles need not be identical in order for tests on one to be relevant in determining whether the design of another is defective. Design differences between vehicles that might prevent certain alternatives from being adapted to the hatchback design do not necessarily undermine the relevance or discoverability of documents relating to those alternatives. Whether a safer fuel system design suitable for one vehicle is adaptable to another is a question of feasibility to be decided by the trier of fact, not a question to be resolved in ruling on discovery requests.

722 S.W.2d at 573-74. This logic is just as applicable to tires as to fuel tanks. There appears to be no dispute that the G670 tires and the G391 tires were designed for use on motor homes comparable to the 2004 Holiday Rambler Scepter at issue in this case. They are sufficiently similar products that information regarding them is reasonably calculated to lead to the discovery of admissible evidence in this case.

² Goodyear response, at 6.

Plaintiffs implicitly concede that their requests must be limited in time, arguing in their motion that information going back 5-10 years is necessary to adequately analyze a tire's performance history. Goodyear argues that this time-frame is still overbroad, but does not suggest what time-frame would be reasonable.³ The court is persuaded by plaintiffs' argument that it is necessary to view performance history over a number of years because of the role of fatigue in tire failures.⁴ The court will order Goodyear to produce the requested information for the 10 years prior to the date of the accident, or August 1995 through August 2005.

It is therefore

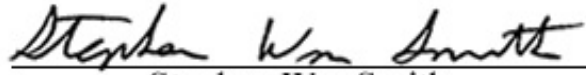
ORDERED that plaintiffs' motion to compel (Dkt. 50) is granted. Goodyear's objections to request nos. 1-4 are overruled, except for temporal scope. Goodyear shall produce responsive documents within 20 days of the date of this Order. To the extent responsive documents contain confidential proprietary trade secrets, Goodyear may designate the documents for production pursuant to the protective order in place in this case.⁵

³ Goodyear's response, at 3 n.3.

⁴ Affidavit of Dennis Carlson, plaintiffs' Ex. 2, ¶ 28.

⁵ Goodyear's motion to strike the Affidavit of Dennis Carlson is denied. The only testimony from Carlson relied upon by the court is his opinion that tread separation failures peak at 3 to 5 years of service. Carlson Aff. ¶ 28. Carlson is qualified by his experience (see Carlson Aff. ¶ 6) to give that factual testimony and it is sufficiently reliable for purposes of a discovery motion. Some opinions expressed by Carlson are improper legal conclusions (*i.e.*, "discovery in tread separation cases should be broad," and "[p]laintiffs have sufficiently alleged a tire defect theory."). But the court did not rely on Carlson's improper testimony in reaching its conclusion on this matter, and thus need not reach Goodyear's evidentiary objections.

Signed at Houston, Texas on September 10, 2007.



Stephen Wm Smith
United States Magistrate Judge